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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1046

FREDERIKA BLANKNER,

Petitioner,

vs.

THE CITY OF CHICAGO,
a Municipal corporation, et al.,

Respondents.

BRIEF IN OPPOSITION OF THE CITY OF CHICAGO RESPONDENTS

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BRIEF IN OPPOSITION OF THE CITY OF CHICAGO RESPONDENTS

ADDITIONAL OPINIONS BELOW

Petitioner has failed to include in her appendices the opinion entered in this controversy by the Illinois Supreme Court in *City of Chicago* v. *Walker et al. (Frederika Blankner, Appellant)*, reported at 50 Ill. 2d 69 (1971), cert. denied, 408 U.S. 931 (1972), rehearing denied, 409 U.S. 899 (1972). It is reproduced as Appendix A of this brief in opposition.

Relevant portions of the Chicago ordinance under which the area, in which petitioner's property is located, was designated an urban removal project—that is, Municipal Code of Chicago, Illinois, ch. 15—are reproduced in Appendix B of this brief.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition for certiorari.

QUESTIONS PRESENTED

1. Whether the filing and maintenance of this action by petitioner constitutes a dilatory abuse of the federal jurisdiction.

2. Whether the state courts have jurisdiction to protect federal constitutional rights.

3. Whether petitioner's cause of action is barred as res judicata, by virtue of a state court judgment entered against her, affirmed by the Illinois Supreme Court, and twice denied review by certiorari by this Court.

4. Whether petitioner was afforded due process of law in the administrative urban renewal proceedings, which resulted in the determination that the area in which her property is situated was slum and blighted.

5. Whether petitioner was afforded an opportunity to present evidence in her defense in the condemnation trial and deliberately declined to do so.

STATEMENT OF THE CASE

This action under the Civil Rights Act (42 U.S.C. §§1983, 1985(3), 1986 and 1988) grows out of an urban renewal condemnation proceeding in the Circuit Court of Cook County, Illinois. The judgment entered against petitioner there was affirmed by the Illinois Supreme Court in *City of Chicago* v. *Walker et al.*, 50 Ill. 2d 69, 277 N.E. 2d 129 (1971), cert. denied *sub. nom., Blankner* v. *Chicago,* 408 U.S. 931 (1972); rehearing denied, 409 U.S. 899 (1972).

In the case at bar petitioner seeks to relitigate the same controversy and the same issues under the guise of asserting that her federal right to due process of law was violated in the state court proceeding and that the condemnation was effected through a fraudulent misuse of federal urban renewal statutes. However, petitioner had already raised these claims in the state court proceeding, where they were rejected. That result was affirmed by the Illinois Supreme Court and this Court twice denied certiorari to review that affirmance.

Essentially what petitioner seeks here is a federal judicial re-review of the municipal administrative and legislative urban renewal determinations, made more than ten years ago, and the state court condemnation proceeding thereunder, which was tried seven years ago. The district court and the court of appeals have both declined to afford her that gratuitous luxury.

The Character Of The Urban Renewal Area

The acts complained of involve administrative and legislative steps taken, pursuant to state statute and city ordi-

nance, preparatory to the condemnation proceeding. The University of Chicago is an urban institution situated in a densely populated area. Fifteen years ago it was confronted with the typical problem of such urban universities of being surrounded and hemmed in by a deteriorating neighborhood (Petition, App. 59-62). Instead of acquiescing in the encroaching blight, the University of Chicago took energetic and effective measures to reverse the trend. It was instrumental in persuading the city government to establish an urban renewal project in the neighborhood of the university, known as the Hyde Park-Kenwood project.

On July 18, 1960, the University submitted to the City of Chicago the so-called South Campus proposal. Petitioner points out (Petition, p. 4) that 60% of South Campus was then already owned by the University. She fails to mention that that 60% of the area included the American Bar Association Center, the University of Chicago Law School, the elaborate Center for Continuing Education and the Shankman Orthogenic School. These structures found themselves cheek by jowl next to and intermingled with a rapidly deteriorating residential neighborhood, with obvious deleterious effects on the university community.

In January, 1961, the Chicago Land Clearance Commission, then a city agency, undertook a survey of the whole Woodlawn area, of which South Campus is a part. These findings were published in 1962. A reproduction of the cover and introductory pages of this report are attached to petitioner's complaint as Exhibit B (Petition, App. 63-65).

Again, in 1964, the Department of Urban Renewal of the City of Chicago, which had taken over the functions

of the Land Clearance Commission, undertook and published a detailed survey of the project area, now called 60th-Cottage Grove Redevelopment Project, in which it concluded that the area was slum and blighted. A reproduction of this report is attached to petitioner's complaint as Exhibit C (Petition, App. 67-90).

The report states that the 60th-Cottage Grove redevelopment area comprised 105.6 acres and is located approximately 6 miles south and one mile east of Chicago's central business district. It is bounded on the north by 60th Street (the south side of the broad Midway Plaisance), on the east by Stony Island Avenue and Jackson Park. It then runs south from one to three blocks, in various places, to 61st Street and 63rd Street, and west one mile to Cottage Grove Avenue and Washington Park.

Of this area, 25.9 acres or 24.5 percent are used for public rights-of-way. The remainder of 79.7 acres contains 36.2 acres or 47.9 percent, then used for predominantly residential purposes. 25.5 acres of the 79.7 acres, or 32.0 percent, was used exclusively for residential purposes, 2.7 acres or 3.4 percent was used for mixed residential and non-residential purposes, and 12.9 acres or 16.2 percent were used for commercial and industrial purposes (Petition, App. 69).

The survey showed that "most of the structures and the living units contained in them had deteriorated to a degree where rehabilitation or conservation would not be economic" (Petition, App. 70). It was found that 246 or 92.5 percent of the 266 structures in the area had one or more of the characteristics listed in the definition of a slum and blighted area in the Illinois Urban Renewal Consolidation Act of 1961 (Ill. Rev. Stat., ch. 67½, par. 91.103(i)), which states:

> "(i) 'Slum and Blighted Area' means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare."

The report further stated that 173 or 92.5 percent of the 187 residential structures had one or more of the characteristics thus listed in the statute, and 73 of the 79 non-residential structures had one or more of these characteristics.

Table 10 of the report (Petition, App. 93) showed that 105 or 54.7 percent of the 192 structures containing living units had been converted. These conversions had increased the number of living units in the area from 1653 to 2592, or by 56.8 percent. The number of dwelling units had increased by 54.5 percent, from 1445 to 2233 and the number of single room units had increased by 72.6 percent, or from 208 to 359. The number of living units in the converted structures had increased 159.1 percent, from 590 to 1529, and the number of dwelling units had increased 133.6 percent, from 590 to 1378 (Petition, App. 70).

The report stated that there were 1644 families in the area, of an average size of 3.4 members. Of these 90 families, or 5.5 percent of the families owned the units in which they resided.

The Administrative Determination

On October 8, 1964, the five-member Board of the Department of Urban Renewal of the City of Chicago adopted

a resolution determining that the said 60th-Cottage Grove project area was slum and blighted and in need of redevelopment.

Petitioner claims (Petition, p. 6) that she did not learn of this administrative determination that the area was slum and blighted until three years later, in October, 1967, when the City made an offer to purchase her property, which she refused.

However, the ordinance under which the Urban Renewal Board operated—chapter 15 of the Municipal Code of Chicago, Illinois—empowers (sect. 15-5) the Board, in determining "the extent and location of slum and blighted areas and other areas which may constitute a redevelopment project" and in ascertaining "in which of such area or areas development or redevelopment should be undertaken" to "conduct public hearings, take testimony and proof under oath on the subject matter." [The text of the relevant portions of this ordinance is reproduced in Appendix B of this brief in opposition.]

It is unlikely that the Urban Renewal Board would make a determination that an area was slum and blighted and a suitable locus for redevelopment—particularly an area as important and prominent as the South Campus of the University of Chicago—without conducting a formal public hearing on the matter after giving formal written notice to each property owner affected.

But because of the very peculiar way in which petitioner conducted her defense of the condemnation proceeding, expressly declining to put in any evidence whatsoever, even evidence regarding an affirmative defense of lack of notice and opportunity to be heard—there is no evidence in the record whether or not petitioner had such

notice. The City, in making out its case, relied on the presumptive validity of the administration and legislative determinations, which petitioner in no way attempted to disprove.

The Legislative Determination

There was also a legislative determination. As the Petition (p. 5) states, on November 16, 1964, the City Council of Chicago adopted a resolution declaring the area slum and blighted and suitable for redevelopment, and authorized its acquisition by condemnation proceedings. Petitioner alleges that the City Council adopted this resolution in reliance on "the false and fraudulent DUR report and resolution." But there is no evidence in the record in support of such expletives.

The City Council of Chicago is organized into the usual legislative committees. Included among them is a Committee on Planning and Housing. This committee conducts hearings on such important matters as the creation of urban renewal projects. Recommendations of committees are subject to public debate in the full City Council.

It seems improbable that no committee hearing was held concerning the $12 million 60-Cottage Grove Redevelopment Project. If any substantial opposition to the project had developed among the owners of the several hundred parcels of land affected, failure to hold a hearing, if there was such failure (which is not conceded), would have attracted notice. But because of the bizarre conduct of petitioner's defense, the record does not reveal whether or not such a legislative hearing was had or whether there was debate on the floor of the City Council. The record does not even show whether petitioner, or any other interested property

owner, consulted the local alderman prior to or within a reasonable time after enactment of the ordinance.

However, the Journal of the City Council for November 16, 1964 (p. 3328), which was introduced into evidence in the condemnation proceeding, contains the report of the Committee on Planning and Housing, recommending approval of the determination of the Department of Urban Renewal that the area be acquired for slum clearance and redevelopment. This recommendation was concurred in by 8 members of the committee, with no dissenting vote.

The same page of the Journal discloses that, on motion of the chairman of the committee, the ordinance approving the DUR determination was adopted by a vote of 45 to 0. The local alderman, Despres, was among those voting in favor of the measure.

The Condemnation Proceeding

After the petitioner had declined to sell her property, the City of Chicago on April 1, 1968, filed a condemnation proceeding in the Circuit Court of Cook County, Illinois, to condemn petitioner's property and the owners of some 219 other parcels of land located in the project. This action was entitled *City of Chicago* v. *Robert L. Walker et al.*, No. 68 L 4969, being so named because Walker was the first-named defendant. He has long since ceased to be a participant in this protracted litigation.

Petitioner filed a traverse and motion to dismiss, and a hearing thereon was held on November 27, 1968. Petitioner was represented by counsel—by John O'Leary of the well-known Chicago law firm of Boodell, Sears, Sugrue and Crowley (R. C155 *et seq.*), the same firm that represents her in the instant petition for certiorari. Three

tenants of petitioner were also represented at this hearing by counsel—by David S. Kreisman, who is now one of the attorneys for petitioner. The tenants joined in the traverse and motion to dismiss. Also appearing by counsel at the hearing was Talman Federal Savings and Loan Association of Chicago, the then mortgagee of petitioner's premises.

At that time of the trial, of the 222 parcels in the project, 203 had already been acquired by the City by agreement. 19 parcels were still outstanding, and of these petitioner owned two. (R. 201 in *City of Chicago* v. *Walker et al.*, Ill. Supreme Ct., No. 41867.)

Petitioner's counsel stated to the court (*id.*, R. 194) that each urban renewal step taken under the laws of Illinois, the ordinance of the City of Chicago and the administrative procedures of the City's Department of Urban Renewal "has been challenged unsuccessfully."

Mr. O'Leary also admitted (*id.*, R. 194) that "there has been a history of the University of Chicago being surrounded with admittedly discouraging conditions." But he argued that the only proper course for the university was to acquire by piecemeal purchase.

Plaintiff's counsel declared (*ibid.*) that "the only thing that I can argue before this Court" was that the condemnation procedure was being improperly used to effect "the acquisition by a private person as and for an ordained and conceived plan." He admitted that another land clearance project, the Lake Meadows high-rise development, in which the land had been cleared by the City of Chicago and the land redeveloped by the New York Life Insurance Company, was not improper, although counsel for the city pointed out that that had also been "prearranged" (*id.*, R. 197).

Petitioner's counsel said nothing at this point about any lack of notice to the property owners of the administrative and legislative proceedings, nothing about any lack of due process.

The motion of petitioner's counsel to strike from the condemnation complaint reference to a "public purpose" was denied, and the traverse and motion to dismiss were denied. The case was continued to January 15, 1969, and then to February 10, 1969.

An appeal was taken by petitioner to the Illinois Supreme Court from the denial of her traverse and motion to dismiss. This appeal was dismissed as premature on January 16, 1969.

When the case came on for trial on February 10, 1975, petitioner was granted, over the City's objection, another continuance of two weeks. At this time, petitioner's counsel, Mr. O'Leary, advised the court that he had been informed by his client (who was not present in the courtroom) "that if today's continuance were not granted, my authority to represent her should at that moment have been terminated" (*id.*, R. 261). A week later, petitioner wrote the trial judge a letter, requesting that the cases be continued generally and without a specific date for trial. The court was informed that she wished to confer with various officials, including Mayor Daley and HUD Secretary Romney "himself," with a view to having her property scheduled for conservation, rather than demolition.

Despite these efforts, the cause came on for trial before a jury on February 25, 1969. A real estate appraiser, Scott W. Tyler, testified for the City. He stated that in the four years preceding April 1, 1968, the date the condemnation action was filed, the market for real estate in

the area had remained constant, with neither appreciation nor depreciation in values. He noted that the subject property was located in an old residential area developed primarily during the Columbian Exposition of 1893 (*id.*, R. 243).

The structure on the subject property of petitioner at 6043-45 South Woodlawn Avenue, Chicago, was described by appraiser Tyler as a three-story walk-up apartment building with a cut stone front wall and brick side and rear walls on a lot of approximately 8000 square feet.

As originally constructed, the building contained six apartments. But in the course of time it had been converted to 18 apartments. The interior walls were of lathe and plaster. But in the conversion drywall had been used. A fire had occurred in the building six years before, and drywall had been used in the repairs. The building had been rewired. An interior stairwell with wooden stairs was in poor condition. A photograph of the subject premises (*id.*, plaintiff's exhibit 2) was admitted into evidence. The appraiser also testified, as required by law, to the sale of a similar property outside the area, in fair to good condition, one block east and three blocks south, for $30,000.

Both petitioner's counsel and the attorney for the mortgagee declined to cross examine appraiser Tyler (*id.*, R. 250).

Another appraiser, William E. Cahill, Jr., also testified for the City and stated that another apartment building outside the area, similar to petitioner's and located two blocks south on the same street, had been sold the year before at a price of $27,500. The City also called a real estate broker, Richard J. Ruzich, who testified that the fair cash value of the subject property on the date the condemnation

action was filed was $43,500. The attorneys for the petitioner and the mortgagee did not cross-examine either Cahill or Ruzich (*id.*, R. 253-258).

In his argument to the jury, the trial lawyer for the City requested that it return a verdict for $43,500 (R. 262). The attorneys for petitioner and for the mortgagee declined to argue to the jury (*id.*, R. 265).

After viewing the property, the jury returned a verdict for $40,750 (*id.*, R. 265).

On March 21, 1969, the Boodell firm was granted leave to withdraw as counsel for petitioner, and Thomas Grippando, Esq., was allowed to substitute as her attorney. He presented motions in arrest of judgment and to set aside the verdict, which were denied.

Notice of appeal was filed by petitioner on March 31, 1969, and an amended notice of appeal on April 7, 1969.

The Status Quo

Meanwhile, the sum of $40,750, the condemnation award, was deposited by the City with the Treasurer of Cook County for the benefit of petitioner and other parties in interest. Petitioner declined to "accept" the award, but the Treasurer paid off the mortgage on the property from the proceeds. After the mortgage had been thus paid off, on petitioner's motion, the Illinois Supreme Court on May 27, 1969, stayed the judgment pending appeal and enjoined dispossession of petitioner from the premises during the pendency of the appeal.

To the present day, petitioner has continued for six years to reside on the mortgage-free property, with her 16 or 17 tenants, from whom she has continued to collect rents totaling in excess of $15,000 annually, without any

obligation to pay taxes. Yet, as of April 30, 1973, the City had expended in excess of $41,000 in maintenance of the building.

Petitioner secured several extensions of time to file her brief in the Illinois Supreme Court. In December, 1969, her attorney on the appeal, Alan S. Ganz, was permitted to withdraw, after his motion for an order requiring the City to pay petitioner's attorney's fees and expenses in the trial court and on appeal—pending the appeal—had been denied.

The next step taken by petitioner was to request the Illinois Supreme Court to appoint for her, as a poor person, counsel as the expense of the state. Upon denial of this application, petitioner sought certiorari from this Court, which was denied. *Frederika Blankner* v. *Chicago,* 400 U.S. 838 (October 12, 1970). Meanwhile, petitioner's time for filing her brief in the Illinois Supreme Court had been extended until 30 days after disposition of her petition for certiorari.

Petitioner then again began seeking extensions of time in which to file her appellant's brief. On January 27, 1971, she was granted a "first" extension to February 26, 1971. This was later extended to May 1, 1971. On May 24, 1971, she was granted leave to file her untimely brief instanter. The City filed its brief 12 days later. Petitioner then sought to have the oral argument postponed to September, 1971. This was denied and oral argument was heard on June 23, 1971.

The Affirmance By The Illinois Supreme Court

On November 24, 1971, the Illinois Supreme Court affirmed the condemnation award. *City of Chicago* v. *Walker et al. (Frederika Blankner, appellant),* 50 Ill. 2d 69, 277

N.E. 2d 129 (1971). Rehearing was denied on January 14, 1972. The opinion of the Illinois Supreme Court is reproduced in Appendix A of this brief in opposition. That opinion held (at 71) once more, that taking of land for the redevelopment of slum and blighted areas is a taking for a public purpose, and the fact that a portion will be resold for development for private purposes does not render the condemnation invalid. (*Chicago Land Clearance Com.* v. *White*, 411 Ill. 310.)

As for petitioner's claim of denial of due process, the Illinois Supreme Court declared (at 70, 71):

> "She argues that she was denied an opportunity to introduce evidence to prove that the area generally, and her property specifically, were not blighted. She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case erroneously shifted to her the burden of proof that the area was not slum and blighted, thus denying her *due process* and equal protection *rights guaranteed under the fourteenth amendment to the constitution of the United States.*
>
> "The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case (*City of Chicago* v. *Barnes,* 30 Ill. 2d 255; *Chicago Land Clearance Com.* v. *Quinn Home Builders,* 11 Ill. 2d 111), and the trial court did not err in denying the traverse and motion." (Emphasis supplied.)

103 days after the denial of a rehearing, Miss Blankner filed her second petition for certiorari in this Court, which

again denied it. *Frederika Blankner,* 408 U.S. 931 (June 26, 1972), rehearing denied, 409 U.S. 899 (December 10, 1972). On July 12, 1972, the Illinois Supreme Court vacated the stay.

The Federal Lawsuit

Miss Blankner had not reached the end of her resourcefulness. On July 25, 1972, she filed the instant civil rights suit. As a matter of courtesy to the district court, the City refrained from taking possession of the premises pending that court's decision.

In the federal action she has reiterated, in four counts, the same old contentions, which she has never tried to prove, and indeed expressly declined to prove. She has seasoned the dish with a liberal peppering of the terms "false" and "fraudulent" and lent the production allure by naming numerous distinguished individuals and institutions, including the University of Chicago and its President and Board of Trustees, and the Secretary of the U.S. Department of Housing and Urban Development, as parties defendant. The crowning achievement of the complaint is to label the cooperation of the University and the City in greatly improving the neighborhood a "conspiracy."

The Opinion Of The District Court

After denying her demand for a three-judge court, the district court granted her leave to file a more specific amended complaint, then dismissed that. The court noted (Petition, App. 13) the pronounced reluctance of the federal courts "to act in effect as courts of appellate jurisdiction when it is alleged that state court proceedings violated due process" and commented:

> "This reluctance stems from the necessity that every unsuccessful litigant in state court proceedings not be permitted to demand relief from alleged errors on the ground that due process was denied."

The district court found that petitioner and her amici curiae had "challenged the constitutionality of the state laws" in the state court proceedings and that "the questions of law presented here were resolved against them." In consequence, the district court concluded (Petition, App. 11, 12):

> "Although the federal civil rights claim is not completely barred by the doctrine of res judicata, it appears to this Court that plaintiff is barred from relitigating the issues previously decided, *Commissioner of Internal Revenue* v. *Sunnen,* 333 U.S. 591, 598 (1948); *Goss* v. *Illinois,* 312 F. 2d 257, 259 (7th Cir., 1963). This holds true even when the federal constitutional issues are decided by state courts. *Gart* v. *Cole,* 166 F. Supp. 129 (S.D.N.Y. 1958), *aff'd.* 263 F. 2d 244 (2d Cir.), *cert. denied,* 359 U.S. 978 (1959). When the issue of the constitutionality of the statutes involved has already been resolved against a plaintiff, subsequent allegations that utilization of the statutes constitutes a denial of due process fail to state a claim."

District Judge McLaren did not fail to observe (Petition, App. 14):

> "However, apart from these considerations, it should be remembered that although plaintiff contended at the time of the condemnation proceeding that the area was not slum and blighted, and that defendants took action to serve their own purposes, she chose not to present evidence either to contest the slum-and-blight determination, or to expose the alleged improper use of the statute."

The Affirmance By The Court Of Appeals

On October 24, 1974, the Court of Appeals for the Seventh Circuit affirmed that judgment, with Chief Judge Swygert dissenting in part. The majority agreed (Petition, App. 23, 24) that Miss Blankner "had an opportunity to litigate the slum and blight issue in the condemnation proceeding, but she deliberately bypassed it" and "had the opportunity to prove that her property was being taken for a private purpose but did not attempt to do so." It held that if there was any fraud in the condemnation proceeding, her remedy would lie in opening up the judgment by proceeding in the state courts under Illinois Rev. Stat. 1973, ch. 110, par. 72.

In partially dissenting, Chief Judge Swygert (Petition, App. 29-32) felt that petitioner had not had an opportunity to make a "meaningful challenge" of the administrative and legislative determinations that the area was slum and blighted. He accepted at face value petitioner's allegation that she "never received notice that her property was being taken for urban renewal until she received a letter in October 1967 from the city offering to purchase her property," thus overlooking the fact of record that Miss Blankner had declined to testify to that. Chief Judge Swygert termed the determination that the area was slum and blighted and selected for urban renewal "a self-fulfillment prophecy," since maintenance and improvement of the area would then immediately cease, followed by vandalism and a general drastic decline in property values. The dissenting opinion did not explain how petitioner could for three years remain in ignorance of the determination, while it had this widespread and drastic effect on the buildings in the area.

During the seven years that this litigation has been winding its way before one trial judge and jury, seven Illinois Supreme Court justices (twice), one U.S. District Court judge, three Court of Appeals judges and nine United States Supreme Court justices (three times), public funds deposited to purchase Miss Blankner's property and expended for surrounding properties have brought little return to the public. Because the stay has denied the City possession of the subject property, planning has been hampered, resulting in piecemeal treatment of small portions.

Until possession is acquired, the prospective purchaser, the University of Chicago, will not accept title to the tract, thus denying the City a purchase price of approximately $1,000,000 and interest due to delay. During the seven years the matter has been pending, construction costs have also risen markedly. But the most damaging result has been that a deteriorating community has been denied the rehabilitation prescribed seven years ago.

REASONS FOR DENYING THE WRIT

I.

THIS CONTROVERSY IS RES JUDICATA AND CONCLUDED.

THIS COURT HAS ALREADY TWICE REFUSED TO GRANT CERTIORARI TO REVIEW THAT JUDGMENT, WHICH WAS ENTERED IN 1968 AND AFFIRMED BY THE HIGHEST STATE COURT IN 1971.

The instant petition for certiorari evinces a misconception of our federal-state form of constitutional government. Petitioner argues (p. 11) that "a federal court should not be bound by the usual rules of res judicata and collateral estoppel when a plaintiff in a federal court suit who was a defendant in state court proceedings and compelled to litigate there, seeks to vindicate specially protected federal constitutional rights and alleges the prior proceedings themselves are constitutionally deficient."

"Compelled to litigate in the state courts" is strong, strange language. The state courts are as firmly bound by the Constitution of the United States as are the federal courts. The state courts have the power and duty to determine whether a state statute violates the United States Constitution, with the decision of the highest state court subject to discretionary review by this Court. *State of Georgia* v. *City of Chattanooga,* 264 U.S. 472, at 483, 484 (1924); *Alabama Public Service Commission* v. *Southern Railway Company,* 341 U.S. 341 (1951); *Baber* v. *Texas Utilities Co.,* 228 F. 2d 665, at 666 (5 Cir. 1956).

In effect, petitioner has here asked the federal district court, under the guise of proceeding under the Civil Rights Act, to exercise appellate court jurisdiction of a state court eminent domain proceeding, which is beyond the jurisdiction of the district court. Thus, in *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923), it was held that the district courts have no jurisdiction to annul a judgment of a state court on the ground that it is in conflict with the United States Constitution for lack of due process, where that question was before the state court for decision.

Petitioner endeavors to obscure the fact that she raised the federal constitutional issue of due process in the state court condemnation proceeding. This is quite plain from the opinion of the Illinois Supreme Court in reviewing that proceeding. That court in *City of Chicago* v. *Walker et al.*, 50 Ill. 2d 69, at 70 (1971) (reproduced as Appendix A of this brief), in describing Miss Blankner's contentions, stated:

> "She contends further that the Circuit Court's ruling . . . [denied] her due process and equal protection rights guaranteed under the constitution of the United States."

The Illinois Supreme Court then rejected petitioner's contentions with the following terse ruling:

> "The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case. (*City of Chicago* v. *Barnes*, 30 Ill. 2d 255; *Chicago Land Clearance Com.* v. *Quinn Home Builders*, 11 Ill. 2d 111), and the trial court did not err in denying the traverse and motion."

The proper and legal federal recourse from that judgment available to petitioner was to petition this Court for certiorari. This she did and this Court twice denied her application. *Blankner* v. *City of Chicago,* 408 U.S. 931 (1972), rehearing denied, 409 U.S. 899 (1972). That terminated the controversy, including her claim of denial of due process.

The dismissal of the instant federal action by the district court and its affirmance by the court of appeals were in accord with prior urban renewal opinions of the Seventh Circuit, in which this Court also denied certiorari.

In *Harrison-Halsted Community Group, Inc.* v. *Housing and Home Finance Agency,* 310 F. 2d 99 (7 Cir., 1962), cert. denied 373 U.S. 914 (1963), a case, brought under the Civil Rights Act and involving the area that is now the Chicago Circle campus of the University of Illinois, an action instituted after the adoption of the urban renewal plan by the state administrative agency and its approval by the City Council, but before condemnation proceedings were filed, it was held that questions arising from the taking of property by condemnation for state purposes are ordinarily matters for determination by state, rather than federal courts. The court declared that a contention that the urban renewal program was depriving the plaintiffs of their property without due process of law was insufficient to invoke the federal question jurisdiction of the federal courts, even though the federal government was subsidizing the program.

In *Green Street Association* v. *Daley,* 373 F. 2d 1 (7 Cir., 1967), cert. denied 387 U.S. 932 (1967), the Seventh Circuit affirmed dismissal of a suit brought under the Civil Rights Act and attacking the constitutionality of an urban renewal

plan for a commercial mall on the ground that it eliminated a black residential neighborhood and was racially discriminatory.

The court noted that "state courts are as firmly bound by the Constitution of the United States as is a federal court and the proper forum for the enforcement of any constitutional rights that may have been violated is in the state courts with the right to petition this Court to make an ultimate determinaton, if it perceived a need to do so."

The opinion of Judge Swygert in *Green* expressly stated (at 7):

> "In summary, therefore, cases presenting challenges to urban renewal programs are matters for the condemnation proceedings in the state courts if the taking is ostensibly for a public purpose, even though violations of federally guaranteed rights are claimed."

The court added (at 6) that the power of eminent domain is legislative in character and, given a public purpose or use, the motives that underlie the exercise of that power may not be questioned.

II.

THERE IS NO CONFLICT BETWEEN THE DECISION OF THE SEVENTH CIRCUIT AND RULINGS OF THE SECOND AND FIFTH CIRCUITS.

It is claimed by petitioner (Petition, p. 15) that a direct conflict exists between the decision below and decisions of the Courts of Appeals for the Second and Fifth Circuits, and that this conflict requires the intervention of this Court.

The latest of the two cases thus cited (Petition, p. 15, 16) is *Lombard* v. *Board of Education of the City of New*

York, 502 F. 2d 631, at 635 (2 Cir., 1974). That was a civil rights action challenging, on due process grounds, administrative termination of plaintiff's employment as a substitute teacher, based on medical examinations which found him to be suffering from "an emotional upset that is of recent origin and is of a paranoid nature." Before instituting the federal lawsuit, Lombard had filed an action in the state courts for judicial review of the administrative determination. But in that proceeding he had not raised the due process issue, relying solely on allegations of prejudice and malice on the part of his principal. The district court dismissed his civil rights action, on the ground that Lombard might have raised the issue of due process in the state court and waived it by not doing so. The Second Circuit reversed, on the ground (at 635) that, since *Monroe* v. *Pape,* 365 U.S. 167 (1961), held that the federal civil rights remedy may be sought even though the state remedy has not first been sought, Lombard had not waived the "independent" issue of impairment of his right to a hearing.

However, in *Lombard* the Second Circuit very distinctly said (at 636, 637):

> "Of course, where a constitutional issue is actually raised in the state court, as it can be in a [New York state] Article 78 proceeding . . ., the litigant has made his choice and may not have two bites at the cherry."

Thus, there is no conflict between the Second and Seventh Circuits as to the law applicable to Miss Blankner.

The Fifth Circuit case that petitioner claims (Petition, pp. 15, 16) is in conflict with the opinion of the Seventh Circuit in the case at bar is *Mack* v. *Florida State Board of Dentistry,* 430 F. 2d 862, at 864 (5 Cir., 1970), cert.

denied 401 U.S. 960 (1971). That civil rights proceeding was brought by a dentist whose license had been revoked for advertising professional services at greatly reduced costs and allegedly taking undue liberties with female patients. The administrative hearing, chaired by a non-lawyer, was characterized by the Fifth Circuit as a confrontation rather than a hearing. It began at 9 a.m. and concluded at 11:35 p.m. The chairman overruled, often erroneously, 90% of the objections made by respondent's counsel, but sustained, often erroneously, 90% of the objections by the attorney for the board. The hearing was marked by continuous personal acrimony and unconcealed venom.

Dr. Mack did seek judicial review in the state courts, arguing that he had been deprived of a fair hearing. The Florida Court of Appeals, with no discussion of the events at the hearing, denied relief, and the Supreme Court of Florida denied certiorari without written opinion. Dr. Mack then filed a federal action under 42 U.S.C. §1983 and the 14th Amendment. The district court found for him and the Fifth Circuit affirmed in part, reversed in part, remanding the cause for a proper administrative hearing conducted by someone competent to do so, but suspending Dr. Mack's license pending such a hearing.

Unlike Miss Blankner, who declined to testify to her allegations, subject to cross-examination, Dr. Mack did attempt to present extensive evidence, most of which the administrative board refused to listen to. Apparently Dr. Mack was subjected to an horrendous ordeal, whereas Miss Blankner received every courtesy from the trial judge and the City's attorneys, including numerous continuances and extensions of time. The fact of the matter is that Miss

Blankner relied on taking issue with a well-established Illinois rule of law as to what constitutes a *prima facie* case in an urban renewal condemnation proceeding. Her contention was overruled, that result was affirmed by the Illinois Supreme Court and this Court has twice denied certiorari to review that very determination.

The petition for certiorari (p. 18) quotes some observations by this Court concerning modification of federal-state relations resulting from the adoption of the Civil Rights Acts. These observations are from Mr. Justice Stewart's opinion in *Mitchum* v. *Foster,* 407 U.S. 225, at 240, 242 (1972). That action was brought by the proprietor of a bookstore which county authorities were endeavoring in the state courts of Florida to close down as a public nuisance. Obviously, First Amendment rights were involved, and the state court proceedings had progressed only as far as the entry of a preliminary injunction against operation of the bookstore. At that point Mitchum sought a federal injunction under the Civil Rights Acts. A three-judge district court refused to enjoin the state court proceedings. On direct appeal, this Court reversed and remanded.

But, in so deciding, this court stated (at 243):

> "Today we decide only that the District Court in this case was in error in holding that, because of the anti-injunction statute, it was absolutely without power in this §1983 action to enjoin a proceeding pending in a state court under any circumstances whatsoever."

However, the Court, citing *Younger* v. *Harris,* 401 U.S. 37 (1971), expressly added the cautionary admonition that the principles of equity, comity and federalism must restrain a federal court when asked to enjoin a state court proceeding.

If Miss Blankner had filed this suit in the district court immediately after the condemnation action was instituted, she could have, under the *Mitchum* case, obtained a ruling that a federal court has the power, in an action under 42 U.S.C. §1983, to enjoin a state court proceeding. But it seems clear that, under the *Harrison-Halsted* and *Green Street* cases, the district would no doubt have referred her to the state courts for protection of her federal rights, subject, as the state courts are, to this Court's discretionary review. If the federal court had not refrained from entering the controversy, at most it would have directed that she be afforded an opportunity to contest the administrative and legislative determinations that the area was slum and blighted.

But Miss Blankner did not rush into federal court as soon as the condemnation suit was filed. She waited five years, until after she had completely exhausted the processes of adjudication and review. Then, by filing this action, she has prolonged her delaying tactics another three years—in the meantime enjoying a mortgage-free, tax-free residence and largely maintenance expense free and collecting rent from as many as 17 tenants, amounting to some $15,000 annually.

Surely, apart from the fact that the controversy is res judicata, this is an occasion for the exercise of federal restraint in the interest of equity, comity and federalism.

III.

PETITIONER HAS BEEN ACCORDED DUE PROCESS.

The gist of petitioner's plea to this Court is that the well-established presumption of validity attaching to legislative enactments and the traditional eminent domain condemnation procedure have operated to deprive her of a

meaningful opportunity to contest the determination that the area in which her property is located was slum and blighted at the time of that determination. (Petition, pp. 13-15.)

Even petitioner must admit that, except for that claim, she has been accorded due process in full measure and running over, both in the condemnation proceeding and in this attempt to invoke the federal civil rights laws. And even if she had attempted to prove, as she emphatically did not, by testimony subject to cross-examination, her allegations of lack of notice of the urban renewal project and of a fraudulent conspiracy between the University of Chicago and the city government, even then her position would still be untenable under a long line of decisions of the Illinois Supreme Court extending back over 30 years, confirmed from time to time to the extent on consistent denial of certiorari by this Court.

Petitioner was probably well advised not to offer any evidence. It is difficult to believe the impression she seeks to convey (Petition, p. 13) that she did not know about the urban renewal project, determined upon in 1964, until 1967. Such projects are commonly well publicized both in the metropolitan press and the neighborhood newspapers. This project no doubt was the subject of lively discussion in the politically aware neighborhood of the university co··nunity. The Chicago Urban Renewal Ordinance (Mu-n.. al Code of Chicago, Illinois, sect. 15-5) empowers the city urban renewal department to "conduct public hearings, take testimony and proof under oath on the subject matter" of an investigation as to whether an area is slum and blighted. If any significant opposition to the project had developed, it is improbable that it would have been adopted without public hearings, both before the Urban

Renewal Board and the appropriate committee of the City Council. If the petitioner had taken the witness stand, she might have found it difficult to explain away these obvious circumstances.

In the dissenting opinion of Judge Swygert—the only judicial support petitioner has found in seven years of litigation—the opportunity in the condemnation proceeding to contest the determination that an area is slum and blighted is described as "merely a mirage" (Petition, App. 31). The dissent argues that "[a]lthough an area may not have been slum and blighted at the time of the original designation, it becomes slum and blighted by the time of the condemnation" because "owners do not improve or even maintain their property in the face of imminent condemnation" (*id.*, App. 29). The question naturally presents itself how petitioner could remain in ignorance of the project while these catastrophic effects said to be occasioned by it were occurring.

The dissent also contends (*id.*, App. 30), "it would be unfair to place the burden on her to show the condition of two hundred sixty-six buildings over four years prior to the trial." Surely, petitioner could have testified to the condition of her own property and the buildings in the immediate vicinity, if she believed it was a mistake to characterize that immediate area as slum and blighted and include it in the urban renewal project. That would not have placed any undue burden on her. She inherited her property from her parents, who purchased it in 1922, when she was about 20 years old. Presumably, at the time of the trial she had been acquainted with the neighborhood for 46 years. And if the urban renewal project had been a fraudulent conspiracy, she could certainly have found corroborating witnesses.

Both petitioner and the dissenting opinion are at odds with long settled law. As Judge Swygert himself stated in writing for a unanimous court in *Green Street Association* v. *Daley,* 373 F. 2d 1, at 6 (1967), cert. denied, 387 U.S. 932 (1967):

> "It is commonplace to recall that the power of eminent domain is an attribute of sovereignty. 'The taking of private property for public use upon just compensation is so often necessary for the proper performance of governmental functions that the power is deemed to be essential to the life of the state.' *State of Georgia* v. *City of Chattanooga,* 264 U.S. 472, 480 . . . (1924) . . . The power of eminent domain is legislative in character."

That statement is in accord with both Illinois and federal law. From the inception of the urban renewal programs, the Illinois Supreme Court has consistently and repeatedly held that the decision to condemn is a legislative decision. In *Zurn* v. *City of Chicago,* 389 Ill. 114, 59 N.E. 2d 18 (1945), it ruled that slum clearance accomplishes a public purpose (at 128, 129); that if the use is public, courts cannot inquire into the necessity of the condemnation, because that is a question for the legislature; and that notice to property owners of administrative hearings prior to the legislative action is not necessary (at 131). However, *Zurn* expressly held that the question whether the contemplated use is public is a judicial question.

These principles were later confirmed by the unanimous decision of this Court in the leading urban renewal case of *Berman* v. *Parker,* 348 U.S. 26, at 33 (1954), where it declared:

> "We do not sit to determine whether a particular housing project is or is not desirable . . . It is with-

in the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them."

In *People ex rel. Tuohy, State's Attorney* v. *City of Chicago,* 394 Ill. 477, 68 N.E. 2d 761 (1946), a quo warranto proceeding concerning a slum clearance bond issue approved by the electorate, the Illinois Supreme Court discussed the concept of public purpose in the light of settled condemnation law, particularly in the railroad cases, and held that it is not necessary in urban renewal that the rehabilitation be done by the city (at 487), since a private purpose may benefit the public (at 481).

In *Chicago Land Clearance Commission* v. *White,* 411 Ill. 310, 104 N.E. 2d 236 (1952), cert. denied 344 U.S. 824 (1952), which involved the Lake Meadows high-rise development in Chicago, the court upheld the taking as slum clearance, even though it was done pursuant to a prearranged deal with the New York Life Insurance Company to redevelop the land taken as a private housing project.

The expenditure of public funds to acquire vacant land for resale to private developers for non-low-rent housing, was held a public purpose in *People ex rel. Gutknecht, State's Attorney* v. *City of Chicago,* 414 Ill. 600, 111 N.E. 2d 626 (1953). In an opinion written by Mr. Justice Walter V. Schaefer, the court again held that the declaration of blight is legislative (at 613), the decision to acquire is not a taking (at 616), the condemnation suit is the hearing (at 617), and an exchange of considerations between the city and a private developer is proper and legal (at 617).

A striking resemblance to the condemnation proceeding in the instant controversy is presented by *Chicago Land Clearance Commission* v. *Quinn Home Builders,* 11 Ill. 2d 111, 142 N.E. 2d 60 (1957), cert. denied, 355 U.S. 856 (1957). There, too, the city introduced certified copies of the resolution of the municipal urban renewal agency and of the ordinance approving it. The defendant filed a traverse, but presented no evidence. In an opinion also written by Mr. Justice Schaefer, it was held that the condemning authority had made out a *prima facie* case, and the unproven traverse was properly overruled.

An even closer duplicate of the *Blankner* condemnation is to be found in *City of Chicago* v. *R. Zwick Co., et al. (Guillermo Gonzales et al., appellants),* 27 Ill. 2d 128, 188 N.E. 2d 489 (1963), app. dism. 373 U.S. 542 (1963). This had to do with the Harrison-Halsted urban renewal project, designed to clear land for the Chicago Circle campus of the University of Illinois, pursuant to a prior deal between the university and the city. There the defendants also contended they had been denied due process in the administrative proceeding and that the official declaration that the area was slum and blighted was a "self-fulfilling prophecy" (at 130). Again, the court, relying upon *Berman* v. *Parker,* held that the hearings were legislative and that the agreement between the city and the university was proper and legal (at 132).

Still another urban renewal condemnation case similar to the one at bar is *City of Chicago* v. *Barnes,* 30 Ill. 2d 255, 195 N.E. 2d 620 (1964), which concerned an urban renewal project at 37th Street and Cottage Grove Avenue in Chicago. There, too, the city introduced certified copies of the administrative determination and the applicable ordinance; the defendants presented no evidence in

support of their traverse. They did convince the trial judge, who dismissed the condemnation proceeding. But he was reversed by the Illinois Supreme Court. Although it was admitted by the city that the property of the defendants was not slum and blighted (which is not conceded by the City in the instant case), the court held that the City had made out a prima facie case, which the defendants had failed to rebut.

Thus, it is clear that all the contentions of Miss Blankner have been repeatedly rejected by the Illinois Supreme Court and review of them has periodically been denied by this Court. There is no need for this Court to devote any more of its limited time to this petition for certiorari than is necessary to deny it.

IV.

THE COURT OF APPEALS WAS CORRECT IN RULING THAT PETITIONER IS NOT A PROPER PARTY TO MAINTAIN THIS LITIGATION AS A CLASS ACTION.

Petitioner brought this civil rights case as a class action on behalf of "all property owners" subject to having their property condemned under the Illinois Urban Renewal Consolidation Act (Ill. Rev. Stat. 1973, ch. 67½, pars. 91.101 *et seq.*; set forth in Petition, App. 93-98). The district court held that res judicata defeated plaintiff's claim and it could not be revived by class allegations (Petition, App. 18, 19).

The court of appeals affirmed the result of this ruling (Petition, App. 27) that, even assuming *arguendo* that plaintiff's membership in the class she purports to represent has not been terminated by the condemnation judgment, she is not a fair representative of the class, for

the reason that most members of the class have not already litigated a condemnation proceeding in the state courts, whereas petition has and the issue of res judicata and collateral estoppel that dominate this case are "unique to Miss Blankner."

Rule 23(a)(3) of the Federal Rules of Civil Procedure requires that the claims of the named plaintiffs be "typical of the claims . . . of the class." Where a major focus of the litigation is on a defense unique to the named plaintiff, as here, then the named plaintiff is not a proper representative. The named plaintiff should not be permitted to impose such a disadvantage on the class. *Koos* v. *First National Bank of Peoria,* 496 F. 2d 1162, at 1164, 1165 (7 Cir., 1974).

The opinion of the Fourth Circuit in *Moss* v. *Lane Company, Inc.,* 471 F. 2d 853 (4th Cir., 1973), cited by petitioner (p. 27), is not in conflict with this ruling of the Seventh Circuit. There the district court had "found that the plaintiff had met 'the four prerequisites for bringing a class action under Rule 23(a)'." (at 855). It was on the basis of that finding that the Fourth Circuit ruled, "If the plaintiff were a member of the class at the commencement and his competency as a representative of the class then determined or assumed, the subsequent dismissal or mootness of his individual claim, particularly in a discrimination case, will not operate as a dismissal or render moot the class, or destroy the plaintiff's right to litigate the issues on behalf of the class" (*id.*). In the instant matter Miss Blankner was not a member of the class at the commencement of the action and there has been no such determination that petitioner is a competent representative of the class. On the contrary, the district

court found Miss Blankner is not a proper representative of the class.

Nor is the Fifth Circuit in conflict with the Seventh on this issue. In *Martin* v. *Thompson Tractor Co.*, 486 F. 2d 510 (5 Cir., 1973), in which the plaintiff claimed he had been subjected to unlawful racial discrimination in employment, a finding against him on the merits was held not to defeat the class action. There the named plaintiff's claim was based on the solid legal ground of racial discrimination. Here the named plaintiff's claim is based on propositions of law that have been repeatedly disallowed by the Illinois Supreme Court in decisions which this Court has repeatedly declined to review.

The same observations apply to *Francis* v. *Allied Service Company of Texas, Inc.*, 486 F. 2d 597, at 598 (5 Cir., 1973) and *Huff* v. *N.D. Cass Company of Alabama*, 485 F. 2d 710, at 712 (5 Cir., 1973), cited in the Petition (p. 26). In *Huff* the case was remanded to determine whether the plaintiff, whose claim had been disposed of on the merits, otherwise satisfied the requirements of Rule 23. In the case at bar, the district court has already determined that Miss Blankner does not satisfy the requirements of Rule 23.

The Sixth Circuit decision cited by the petition (p. 27) in this connection—*Roberts* v. *Union Company*, 487 F. 2d 387 (6 Cir., 1973)—was based on sex discrimination in employment, and the company's defense was the affirmative one of bona fide occupational classification. The district court found on the merits that the plaintiff's lower wages were justified by her sales record and that she had left her employment voluntarily. It was held by the Sixth Circuit this finding did not justify dismissal of the class,

since the complaint alleged the defendant had a discriminatory hiring policy and the class was not limited to current female employees, but encompassed all females who might have been injured by the company's policies.

The class Miss Blankner is endeavoring to represent does not consist of persons with claims of racial or sex discrimination. It consists of persons she asserts might have been injured by a statute, the constitutionality of which has for many years been uniformly upheld. Nor is there any indication anyone else wants to join the class. The class action aspect of this case was properly disallowed.

V.

THE DENIAL OF A THREE-JUDGE DISTRICT COURT WAS CORRECT.

THE QUESTION IS NOW MOOT.

District Judge McLaren denied petitioner's application for the convening of a three-judge court pursuant to 28 U.S.C. §2281 (Petition, App. 1, 2). She had requested this on the ground that the action brought into question the validity under the United States Constitution of a state statute—to wit. The Illinois Urban Renewal Consolidation Act of 1961 (Ill. Rev. Stat. 1973, ch. 67½, §91.101 *et seq.*).

But that statute, by its terms, applies only to "urban communities within . . . [Illinois] with more than 500,000 inhabitants." The statute clearly applies only to the City of Chicago. Nor can it be expected in the reasonable future to apply to any other municipality.

Expressly recognizing that, because of the burden that the convening of a three-judge district court places upon the federal judiciary, this Court has frequently directed

that 28 U.S.C. §2281 is to be strictly construed, the district court ruled that where the challenge is to a statute that on its face seems of statewide application, but actually has only local impact, a three-judge court is not to be convened.

This determination is clearly in accord with this Court's holding in *Board of Regents* v. *New Left Education Project,* 404 U.S. 541 (1972). That case concerned an attack on rules of the Board of Regents of the University of Texas with regard to on-campus distribution of literature and solicitation of dues from members of political organizations. This Court held that because the rules at issue extended to only a fraction of the campuses in the state system of higher education and there was no showing they represented a statewide policy, the three-judge court had been improperly convened and this Court lacked jurisdiction on a direct appeal.

It is of interest that Mr. Justice Douglas, in dissenting in that case, stated (at 546):

> "But where a state law is not of 'statewide concern' and involves only 'legislation affecting a locality' (*Rorick* v. *Board of Commissioners,* 307 U.S. 208, 213 . . .), then the policy of 28 USC §2281 is deemed not served."

Likewise, in *Moody* v. *Flowers,* 387 U.S. 97 ((1967), this Court held that three-judge courts may not be convened to consider challenges to a state statute applying to a particular county.

In affirming the denial of a three-judge court in the instant matter, the court of appeals cited both these decisions of this Court (Petition, App. 28). The discussion of this issue in the petition for certiorari (App. 27-29) ig-

nores these applicable authorities, and instead cites *Williams* v. *Osser,* 326 F. Supp. 1139 (E.D. Pa., 1971), with which the Seventh Circuit stated it disagreed (Petition, App. 28).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied, or, in the alternative, the writ should be granted and the judgment of the court of appeals summarily affirmed.

Respectfully submitted,

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Of Counsel

April 11, 1975

APPENDIX A

In The Supreme Court Of Illinois

(No. 41867.—Judgment affirmed.)

THE CITY OF CHICAGO, Appellee, v. ROBERT L. WALKER *et al.*—(Frederika Blankner, Appellant.)

Opinion filed November 24, 1971.—
Rehearing denied Jan. 14, 1972.

1. EMINENT DOMAIN—*when motion to dismiss condemnation petition is properly denied—urban renewal.* A property owner's traverse and motion to dismiss a city's petition to condemn property for urban renewal is properly denied where the resolution of the Department of Urban Renewal and the ordinance of the city made a *prima facie* case and the defendant property owner elected to offer no evidence. (p. 70)

2. SAME—*contemplated resale for private use does not bar condemnation of blighted area.* The taking of land for the redevelopment of slum and blighted areas is a taking for a public purpose, and the fact that a portion will be resold for development for private purposes does not render the condemnation invalid. (p. 71)

APPEAL from the Circuit Court of Cook County; the Hon. EDWARD J. EGAN, Judge, presiding.

THOMAS GRIPPANDO, of Chicago, for appellant.

RICHARD L. CURRY, Corporation Counsel, of Chicago, (WILLIAM R. QUINLAN, and DANIEL PASCALE, Assistants Corporation Counsel, of counsel,) for appellee.

DAVID S. KREISMAN, STUART DIAMOND and ROBERT STEVENS, all of Chicago, for *amici curiae.*

(Appendix A)

MR. JUSTICE GOLDENHERSH delivered the opinion of the court:

Defendant, Frederika Blankner, appeals from the judgment of the circuit court of Cook County entered upon a jury verdict in an action in eminent domain in which petitioner, City of Chicago, condemned a parcel of real estate owned by defendant.

The City of Chicago, under authority of the Urban Renewal Consolidation Act of 1961 (Ill.Rev.Stat. 1969, ch. 67½, pars. 91.101 *et seq.*) created the Department of Urban Renewal which on October 8, 1964, determined that a certain area adjacent to the campus of the University of Chicago was a slum and blighted area and should be acquired for redevelopment. The city council, by ordinance adopted on November 16, 1964, approved the Department's determination. The petition in this case was filed on April 1, 1968.

Defendant, the owner of a parcel of land situated in the area involved filed a "traverse and motion to dismiss" which in substance attacked the finding of the Department of Urban Renewal that the area was blighted, and charged that the property was being taken for a private and not a public purpose. In support of this latter contention defendant alleged that there was an agreement between the Department of Urban Renewal and the University of Chicago that upon acquisition of the property by the city it would be conveyed to the university, thus enabling the university to acquire, through exercise of the city's power of eminent domain, property which the university had no authority to condemn.

The circuit court denied the traverse and the case was set for trial resulting in the verdict and entry of the judgment from which this appeal is taken.

As grounds for reversal defendant contends that the trial court erred in denying her traverse. She argues that

she was denied an opportunity to introduce evidence to prove that the area generally, and her property specifically, were not blighted. She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case erroneously shifted to her the burden of proof that the area was not slum and blighted, thus denying her due process and equal protection rights guaranteed under the fourteenth amendment to the constitution of the United States.

The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case (*City of Chicago* v. *Barnes*, 30 Ill.2d 255; *Chicago Land Clearance Com.* v. *Quinn Home Builders*, 11 Ill.2d 111), and the trial court did not err in denying the traverse and motion.

Defendant contends further that the court erred in denying her motion to dismiss for the reason that the petition contains conclusions of law and does not plead the ultimate facts requisite to state a cause of action in eminent domain. An examination of the petition shows it to be sufficient and the motion to dismiss was properly denied.

We have considered the arguments of defendant and of *amici curiae* that acquisition of the defendant's property through condemnation for resale to the university denies to this defendant the equal protection of the law. We have previously held that the taking of land for the redevelopment of slum and blighted areas is a taking for a public purpose, and the fact that a portion will be resold for development for private purposes does not render the condemnation invalid. (*Chicago Land Clearance Com.* v. *White*, 411 Ill. 310.) We do not discuss the remaining con-

tentions of *amici curiae* for the reason that insofar as they are relevant to issues presented by the record they have been determined by our holding in *City of Chicago* v. *Zwick Co.*, 27 Ill.2d 128.

Finally, defendant contends that the circuit court erred in denying her request that the trial to determine just compensation be continued for an indefinite period or in the alternative for 90 days. The record shows that the court continued the case for 14 days and that this was adequate for the protection of defendant's rights.

For the reasons stated herein the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

APPENDIX B

MUNICIPAL CODE OF CHICAGO, ILLINOIS:

Chapter 15: Department of Urban Renewal.

"*15-1.* It is determined that there is a need to consolidate the functions of the Chicago Land Clearance Commission and of the Chicago Community Conservation Board in a single body and provide for the creation of a Department of Urban Renewal under the 'Urban Renewal Consolidation Act of 1961.'

"*15-2.* A 'Department of Urban Renewal' is hereby created, which shall exercise all of the powers contained in the 'Urban Renewal Consolidation Act of 1961.' It shall be governed by a Board consisting of five Members who shall be appointed by the Mayor and approved by the City Council . . .

"*15-3.* The Department shall adopt rules and regulations applicable to the administration of the Department.

"*15-5.* The Department of Urban Renewal of the City of Chicago, as agent of the City, shall have and exercise the following powers with respect to redevelopment projects:

(a) to acquire slum and blighted areas which may constitute a redevelopment project;

(b) to clear any area so acquired by demolition or removal of existing buildings and structures thereon; and to install, repair, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan;

(c) to convey real property so acquired for use in accordance with a redevelopment plan;

(d) to accomplish a combination of the foregoing to carry out a redevelopment plan.

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"In relation to the foregoing powers the Department may investigate into living and housing conditions in its area of operation to determine the extent and location of slum and blighted areas and other areas which may constitute a redevelopment project and to ascertain in which of such area or areas development or redevelopment should be undertaken, and in connection with any such investigation may conduct public hearings, take testimony and proof under oath on the subject matter of such investigation, and cooperate with the Commissioner of Planning and the Chicago Plan Commission.

"The Department shall have power to make studies, surveys and plans preliminary to or concerning any projects which are permissible under law . . ."